IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2301 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NISHABEN BALVANTRAI PATHAK - Petitioner(s)
Versus
AUSTEIN ENGINEERING COMPANY LIMITED - Respondent(s)

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Appearance :
MR BB NAIK for Petitioner(s) : 1,
MR RD DAVE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/07/2007

ORAL JUDGMENT

1. The petitioner workman, being aggrieved by the Award dtd.3/7/1996 passed by the Presiding Officer, Junagadh in Reference (LCJ) No.104 of 1991 rejecting the Reference, is before this Court with a submission that the court

below, despite holding that the termination was illegal, erred in not directing reinstatement and further erred in awarding compensation only.

2. Short facts necessary for disposal of the present writ petition are that the petitioner workman came to be removed from the services without issuing any chargesheet or inquiry. She came to the Labour Court and submitted that her termination was absolutely illegal and contrary to the principles of natural justice. The respondent establishment appeared before the Labour Court and filed its written statement contending inter-alia that the present petitioner had become a nuisance at the workplace, she was fighting with co-workmen, she was lodging false reports to the Police and was ever misbehaving with the other co-workmen. They also submitted that some of the co-workmen had made complaints against the conduct of the present petitioner and they were justified in discharging her from services. It is to be noted that during the course of the trial, the persons who had made complaints against the present petitioner, were not examined to prove the contents of the complaints. The persons against whom First

Information Report was lodged, was also not examined as a witness. However, some officers from the establishment appeared in the witness box and produced the complaints submitting that such complaints were received by the respondent. The petitioner also submitted that the termination was absolutely illegal and was without any rhyme or reason.

3. After recording evidence and hearing the parties, learned Labour Court held that from the facts and circumstances of the case, it could be held that the action of the establishment in terminating the services of the workman was illegal. After holding that, it went on observing that the case was relating to morality of the woman, therefore, it would not be just and proper to order reinstatement. It also observed that the workman would be entitled to some compensation.

4. Mr.B.B. Naik, learned counsel for the petitioner workman, submits that the court below had made loose observation in relation to the morality of the petitioner and without there being any evidence available on the records, has ordered that reinstatement would be unjust and improper, as it was likely to lead industrial unrest or

putting the peace of the industry in jeopardy. He submitted that the allegations made in the complaints were not proved and under the circumstances, the court below could not refuse reinstatement with back wages.

5. Mr.R.D. Dave, learned counsel for the respondent, on the other hand, submitted that from a perusal of the complaints it would clearly appear that the petitioner had become a nuisance at the workplace, she was making false allegations against all concerned, she was earning fight with all concerned and was creating unrest at the workplace. He submitted that if witnesses in support of complaints have not been examined, then too, the court below was justified in relying upon the contents, when the complaints were produced by the Manager of the respondent establishment before the Labour Court. He also submitted that present is a fit case where order of reinstatement should not be made.

6. When certain allegations are made against the character of a person, then, such allegations must have an absolute, positive and concrete foundation. One cannot say that a person is bad, corrupt or loose

character. It is easy to make such allegation, it is difficult to prove such allegation and it is impossible to disprove such allegation. Inference can be drawn from the evidence that a person is of loose moral character or not, is corrupt or not, but, one cannot bring negative evidence on the record to show that he is not a bad person. Even otherwise, one cannot prove that he is a good person, because, whether he is good or not is a perception of others. What is good is good because it is inherently good. It is not good in comparison to other. The word “better” is a comparison. Something may be good or bad, but it may be better in comparison to other. Bad is better in comparison to worse and worse is better in comparison to worst. If one has to lose one finger instead of whole of the arm, then, it is a better option but to lose one finger in itself is bad and one cannot term it to be good.

7. It is impossible to prove that one is good and it would almost be impossible to prove that one is good. To prove that someone is bad, clinching evidence is required to be brought on record and when the matter relates to a woman, one has to be extra-cautious in making allegations, because, our system and the culture we

follow, does not permit anybody to make loose allegation against a woman.

8. In the present matter, learned Judge erred in holding that present was the case of morality of a woman. There is no evidence on the record to show or suggest that the reinstatement of the petitioner workman would put the industrial peace to jeopardy. If this was the perception of the learned Judge, then, such perception has no room to survive, because, each court is required to decide a matter on the strength of the evidence available on the records.

9. So far as the submission of Mr.R.D. Dave, learned counsel for the respondent that complaints must be taken on their face value because the Manager of the respondent establishment has filed the same, is concerned, I must reject it. Simply because a big man brings a complaint, the contents of the complaint would not become gospel truth. When allegations are made by somebody, then, that somebody whatever he is in the life, is putting himself in the position of a complainant and he is required to prove the allegations like a complainant and

when he proves such allegations, an appropriate opportunity is required to be given to the delinquent or the person against whom such allegations are made.

10. In the present case, barring filing of the complaints, no other evidence has been brought on record, which can cast aspersion on the character or morality of the woman. I am sorry to record that the Labour Court crossed its limits of decency in making such an observation against the present petitioner.

11. In absence of any inquiry even otherwise the respondent establishment is not entitled to say that the reinstatement of the petitioner would create surcharged atmosphere or would make a case of industrial peace in jeopardy. In the opinion of this Court, such a certificate cannot be issued by the respondent establishment to the petitioner without holding any inquiry. If the respondent establishment was of the opinion that present is a case of quarrelsome woman who is earning fight with everybody and was creating commotion and surcharged atmosphere at the working place, they were required to issue a chargesheet, make

an inquiry and after recording a finding of guilt, could take an action against the present petitioner workman.

12.The respondent establishment for the reasons best known to them, did not make an inquiry into the allegations, did not issue any chargesheet, did not give an opportunity to the present petitioner workman to cross-examine the complainants, the respondent did not even observe the principles of natural justice. The court below though was justified in observing that the termination of the petitioner workman was illegal, but erred in holding that in view of the nature of the allegations, reinstatement should not be allowed, I set aside that part of the award and direct reinstatement of the petitioner workman with 50% back wages from the date of termination till date of Reference, the petitioner workman would be entitled to 100% back wages for the period between the date of the reference and her reinstatement. She would also be entitled to the benefits of continuity of service and other consequential benefits.

13.The petition is allowed with costs of Rs.5000=00 (Rupees Five Thousand only) to be paid by the respondent

establishment to the petitioner workman. The costs to be paid within a period of four weeks. Rule is made absolute accordingly.

14. The respondent establishment shall reinstate the petitioner workman within a period of four weeks from today.

15. If these directions are not observed by the respondent establishment, the respondent, its officers and management would be exposing itself to a serious risk.

(R.S. GARG, J.)

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